

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1320 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

H. K. DESAI & ORS.

Versus

STATE BANK OF INDIA & ANR.

Appearance:

MR PV HATHI for Petitioners
MR GN DESAI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioners, in all 16, filed this Special Civil Application before this Court and prayed therein that the respondents be directed to accord them the benefits which have been accorded to the rankers promoted to the Staff Assistants Gr.III prior to 1.7.55 and/or to direct recruits appointed after 1.7.55 but before 1.1.58 in respect of the claim to be governed by the Imperial Bank

of India Rules. Relief of interest at the rate of 9% p.a. has also been prayed etc.

2. Out of these 16 petitioners, the petitioners No. 2, 4, 10 and 16 have already expired during the pendency of this Special Civil Application. The name of petitioner No.3 has already been struck off by this court. All the petitioners were appointed by the Imperial Bank of India. The Imperial Bank of India was nationalized in the year 1955 and on 1.7.55, the State Bank of India, a body corporate constituted under the State Bank of India Act, 1955, came into existence. Section 7 of the State Bank of India Act provided that every officer and employee of the Imperial Bank shall become on and from the appointed day i.e. 1st July 1955 the officer or employee of the State Bank and shall hold his office or service on the same tenure, remuneration and terms and conditions with some other rights. It is not in dispute between the parties that till 31st December 1957, the State Bank of India has not framed Rules to regulate the service conditions of its officers and employees. The State Bank of India (Officers & Assistants) Rules were framed which have come into force on 1st January 1958. It is also not in dispute that the aforesaid Rules framed by the State Bank of India were made effective from 1st July 1955.

3. The learned counsel for the bank, today filed an extract of Rules governing the service of Assistance in the Imperial Bank of India. This extract of Rules has been taken on record with the consent of counsel for the respondents. The counsel for the bank has also filed five more documents which have also been taken on record with the consent of the counsel for the respondents. From the extract of Rules governing the service of Assistants in the Imperial Bank of India, it comes out that the post of Assistants are to be filled up by direct recruitment and by promotion. It is known as Staff Assistant. There were three grades of Staff Assistants at the relevant time in the Imperial Bank of India, which are as under:

Staff Assistants

Third Grade - Rs.280-30-400-25-500

Second Grade - Rs.400-25-500-30-620

First Grade - Rs.620-30-650-40-810

4. The Rules of the Imperial Bank of India provides that a Probationary Assistant (Staff Assistant) who has been recruited by direct recruitment on successful

completion of probation shall be placed in the Second Grade. It has further been provided that a Staff Assistant in the Third Grade or in the Second Grade shall remain in his grade until such time as he may be promoted to a higher grade and is confirmed in that grade. The learned counsel for the petitioners does not dispute that a Probationary Assistant, direct recruit to the post of Staff Assistant, on completion of his probation period has to be placed in the Second Grade of the Staff Assistant. The petitioners were promoted on the post of Staff Assistants in the Gr.III in the month of February 1956 and onwards but prior to 1st January 1958. All these petitioners have been promoted after 1.7.55. The Probationary Assistants were appointed after 1.1.75 but before 1.1.58.

5. It is not in dispute that all the three grade of Assistants were merged into one by the State Bank of India and a unified scale for this cadre of Rs.300-550 has been prescribed. All the Staff Assistants, i.e. promotes as well as Probationary Assistants, the direct recruits, were taken in the pay scale of Rs.300-550. The petitioners who were promoted to Staff Assistants in the third grade, i.e. Rs.280-500 have been given fitment in the higher pay scale, i.e. Rs.300-500. The Probationary Assistants, on their confirmation, as per the Imperial Bank of India Rules, would have come in the scale of Rs.400-620 and as such they were certainly sufferers as their pay has been fixed in the pay scale of Rs.300-550. It is also not in dispute that the Probationary Assistants should have been ranked senior to Staff Assistant, Gr.III, and naturally because they would have been in the higher pay scale. Because of this fitment in the pay scale of Rs.300-550, the Probationary Assistants of the direct recruits who would have been in advantageous position qua promotes, Staff Assistants, Gr.III, to which cadre the petitioners belonged in the matter of pay scale as well as seniority, were put to a disadvantageous position and hence they made a representation to the bank for redressal of anomaly which has resulted as aforesaid. This anomaly has been resulted because of coming into force of State Bank of India Rules from 1.7.55. The decision of the bank has been produced by the respondents alongwith reply. Para-4 is relevant for the purpose of deciding the controversy which has given rise to the present case, which reads as under:

"These officers have now given a letter of undertaking on the aforesaid terms. We accordingly recommend that the scales of pay and connected allowances applicable to the Imperial

Bank of India Assistants presently designated as 'Officers' be extended to the direct recruits, who joined the Bank's service as Probationary Assistants during the period 1.7.1955 to 31.12.1957 and continued to be in the Bank service as on the 1st September 1968, from the date of the appointment till the time they are promoted to the State Bank of India Staff Officers Grade II."

As a result of the aforesaid decision taken by the Bank, it is not in dispute that the Probationary Assistants or direct recruits have been given only one advance grade increment in the pay scale of Rs.300-550. The petitioners' claim that giving of this one grade increment only to the Probationary Assistants or direct recruits makes hostile discrimination. When all the Staff Assistants whether promotees of Gr.III or Probationary Assistants have been brought in one grade, then these benefits could have been given to one set of persons. I do not find substance in the contention of the counsel for the petitioners. It cannot be said to be a case of discrimination. The Probationary Assistants and/or direct recruits were persons to be taken in the Gr.II in case the Imperial Bank of India Rules were made applicable. It is also true that from 1.7.55, the State Bank of India Rules were given effect. These Rules have come into effect from retrospective date by legal fiction, but the fact remains that the Probationary Assistants or direct recruits were recruited when these Rules were not in force. By this fitment, certainly the Probationary Assistants or direct recruits have been put to a disadvantageous position and the petitioners have gained the higher pay scale. In comparison to what the petitioners have been given by fitment in the scale of Rs.300-550, the Probationary Assistants were given only one more grade increment in the said pay scale. Otherwise they would have come in the Staff Assistant, Gr.II, the pay scale of which, i.e. Rs.400-620, was much higher than what has been given to them. The learned counsel for the petitioners is unable to make out any case of discrimination. On the other hand it is a case where just and reasonable decision has been taken by the bank to give relief, much less than what otherwise the Probationary Assistants or direct recruits would have got in case the Imperial Bank's Rules were given effect.

6. Taking into consideration the facts and circumstances of the present case, in case relief as prayed for by the petitioners is granted to them, they will get double benefits by way of fitment in higher pay

scale and one additional increment in the said pay scale. It is not a case where different treatment has been given to the petitioners. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. No order as to costs.

.....

(sunil)